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No. 80-197

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

WORLDWIDE CHURCH OF GOD, INC., *et al.*,
Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

REPLY BRIEF OF PETITIONERS

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INTRODUCTION

Pursuant to Rule 22.5 of the Rules of this Court, petitioners Worldwide Church of God, Inc., *et al.*,[1] file this brief in reply to respondent's "Memorandum in Opposition to Petition for Writ of Certiorari," filed with this Court on September 12, 1980.[2]

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[1] *See* Petition at (ii) (identifying petitioners). Respondent State of California will be referred to herein as "the Attorney General" and "the State," alternatively.

[2] Disclaiming the need to argue for denial of review in the form of a brief, the Attorney General purports instead to file a "memorandum" opposing the instant petition. Memorandum at 1. *But see* Rule 22.1.

ARGUMENT

I. THE PETITION IN No. 79-1348 DID NOT PRESENT THE FOURTH AMENDMENT ISSUES RAISED HEREIN.

The Attorney General's contention that the Fourth Amendment claims raised in the instant petition are identical to those presented in the Petition for Writ of Certiorari in *Worldwide Church of God, Inc.* v. *Superior Court*, No. 79-1348, *cert. denied*, 100 S.Ct. 2974 (1980), Memorandum at 1, is frivolous. The petition in No. 79-1348 sought review of six state-court judgments denying relief from a series of discovery orders (and an anciliary enforcement decree) directed against petitioners commencing on March 13, 1979, in an ongoing civil suit. The instant petition seeks review of a state trial court's refusal to order the return of papers and other non-contraband items seized in a raid of church premises on January 3 and 4, 1979, in violation of the Fourth and Fourteenth Amendments—a refusal of the relief specifically required by *Stanford* v. *Texas*, 379 U.S. 476 (1965), *see* Petition at 13-14, 17 & n.8, to which the Attorney General does not even refer.

The petition in No. 79-1348 involved Fourth Amendment issues only insofar as petitioners there argued, among other things, that the discovery orders in question were invalid to the degree that they (1) were "tainted . . . by the path the State [had] followed in obtaining them," Petition in No. 79-1348 at 41; and (2) were issued without a judicial determination either that the suspicions of misconduct offered by the Attorney General to justify those orders had any factual basis, or that the State's legitimate aims could be achieved by no less intrusive means. *Id.* at 29-31. But precisely because the validity of the January 3 and 4, 1979, search and seizure *itself* was not before this Court in No. 79-

1348, petitioners there stressed that the infirmities of that search and seizure were relevant *only* insofar as the challenged discovery orders might be regarded not simply as the fruit of evidence already seized illegally by the State, but as the continuation "of an indiscriminate search and seizure that [was] not yet complete." Reply Brief of Petitioners in No. 79-1348 at 7 n.12. *See id.* at 7.[3] Thus the Fourth Amendment contentions advanced by petitioners in No. 79-1348 do not even intersect those presented in this petition, which *for the first time* seeks direct review by this Court of the validity of the search and seizure of January 3 and 4, 1979, under the Fourth and Fourteenth Amendments.[4]

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[3] Regarded solely as the alleged fruit of an already completely illegal search and seizure, the discovery orders challenged in No. 79-1348 could have been struck down by this Court only if the exclusionary rule were deemed applicable and the taint deemed not to have been dissipated. Cf. *United States* v. *Ceccolini*, 435 U.S. 268 (1978); *United States* v. *Janis*, 428 U.S. 433 (1976); *United States* v. *Calandra*, 414 U.S. 338 (1974). No such determinations need be made here, since the instant petition does not call upon this Court to exclude or suppress any evidence or its fruits. *See* n.4 *infra*.

[4] The Fourth Amendment's substantive standards, of course, were applied to the states through the Fourteenth Amendment long before *Mapp* v. *Ohio*, 367 U.S. 643 (1961). *See Wolf* v. *Colorado*, 338 U.S. 25 (1949). Whether petitioners would also be entitled on remand to the suppression of various uses at trial of illegally-seized papers and effects upon their return is no more relevant here than it was in *Stanford* v. *Texas*, *supra*. *See* Petition at 17 n.8.

II. NO PENDING STATE-COURT PROCEEDING WARRANTS THIS COURT'S "ABSTENTION."

The Attorney General's suggestion that "the instant petition is premature," Memorandum at 2, is also wholly without merit. Although petitioners in the pending state-court appeal in *California* v. *Worldwide Church of God, Inc.*, 2d Civ. No. 57321 (Ct. App.), attempt to challenge, among other things, the subsequently-vacated *ex parte* receivership order of January 2, 1979, under the supposed auspices of which the Attorney General's deputies and other agents on January 3 and 4, 1979, conducted the search and seizure challenged herein, *see* Petition at 5-9; Brief of Appellants in 2d Civ. No. 5732-1 at 41 n.34, 73, 76, at issue in that appeal is *not* whether materials already seized are to be suppressed or returned," *id.* at 82 (emphasis added), but whether various receivership orders and injunctive decrees should be set aside. *Id.* at 3-4.

At issue *here*, however, are *precisely* (1) the legality of the search and seizure conducted by the Attorney General's deputies and other agents on January 3 and 4, 1979, under the nominal supervision of the court-appointed receiver, *see* Petition at (i), 5, 9, 12; and (2) the validity of the lower court's judgment refusing to order the return of the documents and other non-contraband items illegally seized on January 3 and 4, 1979, contrary to *Stanford* v. *Texas*, *supra*. *See* Petition at 13-14, 17 & n.8. That *this* judgment is final and not subject to further direct or collateral state-court review (petitioners having exhausted all avenues of discretionary state-court review), *see id.* at 17 n.8, is not disputed by the Attorney General. "Abstention" is thus wholly inapposite, since vindication of the federal constitutional claims—or even consideration of the arguments—that petitioners advance herein would not follow from success on the merits in the pending

state-court appeal. Hence, the relief petitioners seek would remain unavailable.[5]

CONCLUSION

The Attorney General opposed petitioners' motion for the return of illegally-seized papers and other non-contraband items on the twin grounds (1) that Fourth and Fourteenth Amendment protections are inapplicable to searches and seizures of a church's or other charitable organization's premises or property by state law-enforcement agents, and (2) that such protections in any event cease to apply whenever a court-appointed receiver is involved. In response to these arguments, the court below refused to order the return of petitioners' illegally-seized papers and effects.

Because the search and seizure through which those papers and effects were seized met none of the Fourth

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[5] As the Attorney General concedes, this petition makes no claim "that the receiver was illegally appointed." Memorandum at 2. Nor would invalidation of the search and seizure in question follow from a state-court determination in 2d Civ. No. 57321 that the January 2, 1979, *ex parte* order failed to install a valid receivership. For an order insufficient to sustain a receivership might nonetheless be defended as sufficient to support a search and seizure. And, in any event, the Attorney General has consistently justified the search and seizure here as having touched no private rights, App. 205b-212b, 228b-229b, and thus as having required *no* court order whatever: on the Attorney General's view, "[since] there is no . . . reasonable expectation of privacy in [a church's] records it follows that [the State's] inspection of such records does not constitute an unreasonable search and seizure within the meaning of the Fourth Amendment." *Id.* at 210b. *See* Petition at 10-11. Finally, the Attorney General certainly does not suggest that the Fourth Amendment claims asserted by petitioners here could be vindicated on a motion to suppress at trial. When such a trial will take place (if ever), and how much of the material illegally seized will then be offered into evidence (if any), are impossible to say. In any event, it bears repeating that the right claimed here—a right to the return of property lawlessly seized by the State—is a right for which the prospect of possible suppression is obviously no substitute.

Amendment's requirements—much less the heightened requirements applicable where First Amendment rights are also at stake, *see* Petition at 11—this case squarely presents to this Court, for the first time, two extraordinary breaches in the Fourth Amendment wall hitherto surrounding private property—breaches justified by the Attorney General on principles wholly inimical to liberty under law. Thus the instant petition should be granted and the judgment below should be reversed.

Respectfully submitted,

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* Petitioners acknowledge the assistance of David H. Remes of Cambridge, Mass., in the preparation of this reply brief.